

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)	4:13CR3054
)	
Plaintiff,)	
)	MEMORANDUM
v.)	AND ORDER
)	
ALONZO ANDRES-JESUS,)	
)	
Defendant.)	
_____)	

Defendant has filed a motion for leave to file a late notice of appeal (filing [61](#)), which may only be granted upon a showing of “excusable neglect or good cause.” [Fed. R. App. P. 4\(b\)\(4\)](#). For the reasons stated below, the motion will be denied.

Defendant was sentenced on February 26, 2014, and was notified at that time of the requirements for filing a notice of appeal. Defendant and his counsel both signed a copy of the notice of right to appeal form, which was then placed in the court file (filing [47](#)). Judgment was not entered until March 4, 2014. Defendant had 14 days from that date (*i.e.*, until March 18, 2014) in which to file a notice of appeal. *See* [Fed. R. App. P. 4\(b\)\(1\)\(A\)](#). An extension cannot be granted for more than 30 days past that filing deadline (*i.e.*, until April 17, 2014). *See* [id.](#)

A pro se notice of appeal was received by the court and filed on April 9, 2014; the mailing envelope is postmarked April 7, 2014, and it includes a return address at the Leavenworth Detention Center (filing [53](#)). There has been no showing that the notice of appeal, which is dated March 21, 2014, was timely filed under the “prison mailbox” rule. *See* [Fed. R. App. P. 4\(c\)\(1\)](#). On April 16, 2014, the undersigned granted Defendant leave to proceed in forma pauperis on appeal while also making a determination that his notice of appeal was untimely.

The motion for leave to file a late notice of appeal was filed by Defendant's counsel on April 21, 2014.¹ Defendant's counsel states that he was not asked to file a notice of appeal, but that on March 3, 2014, he received from Defendant a signed copy of the notice of right to appeal form which the court had given to Defendant at the time of sentencing. Defendant's counsel also notes that Defendant signed an appeal waiver which was presented to the court at the sentencing hearing, and he expresses a belief that Defendant may be confused regarding his right to appeal.

The motion for leave to file a late notice of appeal is untimely, and, in any event, does not show that Defendant's failure to file a notice of appeal within 14 days from the date of entry of judgment was the result of excusable neglect or that other good cause exists for granting an extension of time. Accordingly,

IT IS ORDERED:

1. Defendant's motion for leave to file a late notice of appeal (filing [61](#)) is denied.
2. The clerk of the court shall forward a copy of this memorandum and order to the Eighth Circuit.

April 23, 2014.

BY THE COURT:

Richard G. Kopf
Senior United States District Judge

¹ Defendant's counsel was also notified by the Clerk of the United States Court of Appeals for the Eighth Circuit on April 17, 2014, that the notice of appeal appeared to be untimely.